



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/241,536	09/30/2005	Steven S. Homer	82185038	4809
22879	7590	10/15/2013		
HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528			EXAMINER COSIMANO, EDWARD R	
			ART UNIT 2862	PAPER NUMBER
			NOTIFICATION DATE 10/15/2013	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

JERRY.SHORMA@HP.COM
ipa.mail@hp.com
brandon.serwan@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE PATENT TRIAL AND APPEAL
BOARD

Ex parte STEVEN S. HOMER, SCOTT LOVE,
and PASHA MOHI

Appeal 2011-004189
Application 11/241,536
Technology Center 2800

Before PETER F. KRATZ, MARK NAGUMO, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1-35. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

Claim 1 is illustrative of the claimed subject matter:

1. A computer system, comprising:
a processor; and
a calibration module comprising stored instructions executable by the processor, where the calibration module functions to detect an input frequency for at least one input mode of a digitizer device, the calibration module functions to determine whether the input frequency is within a frequency tolerance band corresponding to the at least one input mode; and
where the calibration module functions to adjust the frequency tolerance band to include a value of the input frequency.

As Appellants' point out, all of the four other independent claims (Claims 10, 19, 24, and 31) similarly recite "a calibration module for a digitizer device" (App. Br. 2).

The following rejections are on appeal:¹

Claims 31 -35 under 35 U.S.C. § 101 as directed to non-statutory subject matter;

Claims 1, 2, 9-11, 18, 19, 21, 23, 24, 26, 27, 31, and 32 under 35 U.S.C. § 102(b) as anticipated by Schuermann (U.S. Patent No. 4,726,051, issued Feb. 16, 1988);

Claims 3-8, 12-17, 20, 22, 25, 28, 29, 30, and 33-35 under 35 U.S.C. § 103(a) as obvious over the combined prior art of Schuermann and Shah (U.S. Patent No. 6,173,164 B2, issued Jan. 9, 2001).²

¹ The Examiner withdrew various rejections made under §§102 and 103 in the Final Office Action (*see, e.g.*, Ans. 3).

² While the Examiner separately rejected claims 4, 6, 7, 12, 14-16, 20, 25, 29, 30, 34, and 35 under 35 U.S.C. § 103(a) as obvious over the combined

ANALYSIS

As an initial matter, we summarily affirm the rejection of claims 31 to 35 under 35 U.S.C. § 101. Appellants agree they will “accept amendment of claims 31 . . . to include [the] phrase ‘non-transitory’” (Reply Br. 2). Our precedent makes clear that it is necessary to specifically disclaim carrier waves or signals in order to exclude non-statutory subject matter (*Ex parte Mewherter*, App. No. 2012-007692 (PTAB 2013) (precedential); *In re Nuijten* (Fed. Cir. 2007)).

Appellants do not separately argue any of the claims in the anticipation rejection, and focus the specific arguments on claim 1 (Br. 18-20). Accordingly we select independent claim 1 as representative.

We have reviewed each of Appellants’ arguments for patentability. However, we determine that a preponderance of the evidence supports the Examiner’s finding that the claimed subject matter of representative claim 1 is anticipated within the meaning of § 102 by Schuermann. A preponderance of the evidence also supports the Examiner’s rejection of claims 12, 15-17, and 20 within the meaning of § 103.

Accordingly, we will sustain the Examiner’s rejections of all the claims for essentially those reasons expressed in the Answer, including the Examiner’s Response to Argument section, and we add the following primarily for emphasis.

prior art of Schuermann and Shah, “and further in view of obvious modifications” (Ans. 8), they are rejected over the same prior art as claims 3, 5, 8, 13, 17, 22, 28, and 33 (Ans. 7).

“[T]he PTO must give claims their broadest reasonable construction consistent with the specification . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) “[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.” *Id.*

After consideration of the record before us, Appellants have not shown reversible error in the Examiner’s determination that the broadest reasonable interpretation of claim 1 encompasses the cordless telephone system of Schuermann (e.g., Ans. 5-6, 22-36).

Appellants’ argument that Schuermann does not use the word “digitizer” and thus does not disclose this feature (App. Br. 14; Reply Br. 4), is not persuasive for reasons set out by the Examiner (e.g., Ans. 26, 27). The Examiner carefully and thoroughly determined the broadest reasonable interpretation of the current claim language (Ans. 22-36). Notably, the Examiner determined that “either the fixed device or mobile device of Schuermann are functionally equivalent to the recited ‘digitizer device’” (Ans. 35; *see also* Ans. 26, 27). The Examiner also aptly points out that Appellants’ Specification broadly defines the digitizer device as “*any type of device for providing a wireless input to [a] computer device*” (Spec. para. [0006], *emphasis added*; Ans. 27). Furthermore, the Examiner found that “digitizer device” did not add any additional structure to the claimed invention (Ans. 30, 31).

Appellants also urge that Schuermann does not disclose “the calibration module functions to adjust the frequency tolerance band to

include a value of the input frequency” (Reply Br. 4; App. Br. 14).

However, Appellants fail to point out any specific error in the Examiner’s finding that

Schuermann (‘051) perform the function of sweeping through the entire range of one or more expected frequencies until an identification code is detected and an identification code is detected, then the fixed device and/or the mobile device of Schuermann (‘051) use a *frequency control loop* [col. 8, ll. 54-56] *in order to adjust or set or lock the expected frequency tolerance band*, that is the operating frequency of the fixed device and the mobile device of Schuermann (‘051) to the detected input frequency that contained the detected identification code.

(Ans. 36; emphasis added; *see also* Ans. 35).

On this record, Appellants have not shown by persuasive technical reasoning or credible evidence that the Examiner’s interpretation of Appellants’ claims is in error (App. Br; Reply Br. *generally*).

The Examiner also maintains an obviousness rejection over various dependent claims based on Schuermann and Shah (Ans. 6-7). Appellants do not present any specific further arguments for any of these claims based on this combination of references (App. Br. 16-18). To the extent that any of the claims are argued separately in either the anticipation or obviousness rejections, we determine that a preponderance of the evidence supports the Examiner’s findings and conclusions.

Accordingly, we affirm the Examiner’s anticipation rejection of claims 1, 2, 9-11, 18, 19, 21, 23, 24, 26, 27, 31, and 32, as well as the Examiner’s obviousness rejection of claims 3-8, 12-17, 20, 22, 25, 28, 29, 30, and 33-35. We also affirm the Examiner 101 rejection of claims 31-35.

Appeal 2011-004189
Application 11/241,536

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136.

ORDER

AFFIRMED

cam